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MAY 05 2005

OFFICE OF PETITIONS

In re Application of
Van Engelen et al.
Application No. 09/928,138
Filed: August 10, 2001
Attorney Docket No. ACO6160US

DECISION GRANTING PETITION

This decision is in response to applicant's "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT" filed May 3, 2004. Applicant's request that the amount of patent term adjustment (PTA) be adjusted from one hundred and twenty-five (125) days to two hundred and one days at the time of the mailing of the notice of allowance.

Applicants' request for reconsideration of the patent term adjustment is **GRANTED**. The Office will adjust the PTA determination at the time of the mailing of the notice of allowance to be two hundred and one (202) days as suggested by applicant.

Applicants' allege that the seventy-seven day reduction for the response filed by applicant to the notice to file missing parts within three months is not accurate. Applicants further agree with the Office as to the fourteen month requirement as well as an overdue three month response (202-1-201). Applicants assert that the response to the missing parts was filed on October 30, 2001 and received by the Office on January 29, 2002. Applicants assert that the mailing occurred during the Anthrax mail crisis and accordingly, should not receive any PTA reduction.

Applicants' arguments are persuasive. The Office posted a notice during the mail delay stating that during such delay the Office would use the date of the certificate of mailing and add 3 business days to ascertain the response date by applicant. See 1254 Off. Gaz Pat. Off. 92 (Jan. 15, 2002).¹ Accordingly, the Office notes that pursuant to this notice the applicants did in fact respond to the notice to file missing parts within three months. The seventy-seven (77) day reduction will be removed.

The Office notes that the two hundred and two (203) days of Office delay can be attributed to the Office's failure to act upon the application within fourteen months of the filing of the application. See 37 CFR 1.702(a)(1). In addition, the one day reduction can be attributed to the applicants'

¹The Office notes that the for purposes of PTA the date of the certificate of mailing is not generally considered the response date by applicant but rather the date that the response is received in the Office. See 37 CFR 1.703(f).

failure to respond to the Office action mailed September 15, 2003 within three months.² Accordingly, the proper PTA at the time of the mailing of the notice of allowance is two hundred and two (202) days.

After the mailing of this decision, the Office will forward such file to the Office of Patent Publication for a prompt issuance of the patent application. The Office notes that any delay in issuing the application beyond four months of the payment of the issue fee and other requirements being satisfied will be reflected in the PTA determination at the time of the issuance of the patent.

The Office has assessed the \$200.00 fee pursuant to 37 CFR 1.18(e). No additional fees are required.

Any questions concerning this decision should be directed to Kery A. Fries, Senior Legal Advisor, at 571-272-7757.

Kery A. Fries
Karin Ferriter
Senior Legal Advisor
Office of Deputy Commissioner
for Patent Examination Policy

CC: Copy of Adjusted PAIR calculation

²The applicant responded on December 16, 2003, a one day delay.